

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:
JOHN SCHILLING

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DOCKET NO. 81-42

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On September 9, 1981, The Vermont State Employees' Association ("VSEA") filed a grievance with the Vermont Labor Relations Board on behalf of John Schilling ("Grievant"). Therein, VSEA alleged the Department of Public Safety ("Department") violated Article 8, Section 4(f) of the collective bargaining agreement ("Agreement") between the State of Vermont and VSEA for the State Police Unit, effective July 1, 1981 - June 30, 1982, by denying Grievant's request for delayed reporting overtime.

A hearing was held January 21, 1982, before the full Board at the Board hearing room in Montpelier. Michael Zimmerman, Counsel for VSEA, represented Grievant. The State was represented by Assistant Attorney General Scott Cameron. Memoranda of Law and Findings of Fact were filed by VSEA and the State on February 2, 1982, and February 8, 1982, respectively.

Findings of Fact

1. Grievant has been employed by the Department of Public Safety since April 1977 as a member of the Vermont State Police. In July 1981, his rank was Senior Trooper (Pay Scale 13) and during that month Grievant worked out of the State Police Office in Bethel, Vermont.

2. Grievant was, during July 1981, a member of the State Police Bargaining Unit of VSEA. On July 1, 1981, a new Agreement for that unit went into effect. Article 8 of the Agreement provides in pertinent part as follows:

ARTICLE 8

REGULAR HOURS AND OVERTIME

1. The regular work shifts are:

a. A day shift commencing between 5 a.m. and 8 a.m. on a staggered or non-staggered basis as the Department may determine;

b. An evening shift commencing between 4 p.m. and 7 p.m. on a staggered or non-staggered basis as the Department may determine. Nothing hereunder shall prevent the Department from establishing additional or overlapping work shifts. Staggering of the basic day and evening shift shall not be used to provide 24 hour coverage.

4. Overtime:

a. Overtime pay: Except as otherwise provided in this Article, overtime hours worked in excess of the regular scheduled workday or the regular scheduled workweek shall be paid in cash at straight time rates.

f. Delayed Reporting Time: An employee who is ordered to report for a full tour of duty later than his regular shift starting time and who works a full tour of duty (9.5 hours) or part thereof which terminates later than his normal shift quitting time shall be paid an extra half-time premium for such time worked outside his regularly scheduled work day...

(Grievant's Exhibit #3)

3. The Agreement effective July 1, 1981, was the first Agreement containing a delayed reporting time premium provision for State Police Officers, and the first Agreement providing for the payment of overtime to State Police Officers.

4. On June 18, 1981, prior to the effective date of the Agreement, the Department Commissioner Paul Philbrook issued a memorandum to all State Police supervisors concerning the Agreement's implementation. That memorandum provided in pertinent part as follows concerning the implementation of the language in Article 8, Section 4(f):

The following is the latest information available as to the language which will be contained in the State Police Unit Agreement, Following each Article are the implementation procedures to be followed...

f. This delayed reporting time provision applies only if an officer is ordered to come in later than the starting time of his regularly scheduled shift. Absent special circumstances, such as an adverse effect on regular shift staffing, a supervisor who knows that an officer will be needed beyond the time at which his regular shift ends should have that officer report later than his regular shift starting time rather than allow him to come in at his regular time and then approve overtime...

(Joint Exhibit #2)

This memorandum represented the Department's unilateral interpretation of the contract.

5. In Grievant's experience as a State Police Officer, day shifts have always begun at 8:00 a.m., and night shifts have begun at 5:00 p.m. To his knowledge, and in his experience, there has never been a shift that begins at noon.

6. Monthly work schedules for Grievant and his colleagues are prepared by a Patrol Commander, approved by a Station Commander, and posted about one week prior to the beginning of the month in which the schedules are to take effect. The same procedure was followed with respect to Grievant's schedule for the month of July, 1981.

7. Prior to July 1981, while Grievant's supervisor was in the process of preparing the July work schedule, there was discussion between Grievant and the supervisor, Corporal LeClair, concerning the fact that on July 14, 1981, the last opportunity for Grievant to receive required training in the use of the alcosensor machine would occur. LeClair decided Grievant would take that training on the evening of July 14, 1981, and that his schedule would be changed in such a way that instead of Grievant beginning work at 8:00 a.m. and receiving overtime for attending the training (which would begin after normal quitting time, i.e. 5:30 p.m.), Grievant would begin working at noon (which would result in a quitting time of 9:30 p.m.). LeClair informed Grievant he would, as a result of the schedule change on July 14, 1981, be eligible to receive delayed reporting time premium pay.

8. Grievant's work schedule for the month of July 1981 indicated he was to report for duty at either 8:00 a.m. or 5:00 p.m. on all scheduled workdays except July 14. For two weeks of the month Grievant was scheduled to work the day shift (8:00 a.m. to 5:30 p.m.) and for two weeks he was scheduled to work the night shift (5:00 p.m. to 2:30 a.m.). For the week of July 10-16, Grievant was scheduled to work the day shift, with the exception of July 14, on which day he was scheduled to report to work at noon (Joint Exhibit #1).

9. On July 14, 1981, Grievant reported for work at noon, performed his normal duties, attended the required training, and ended work at 9:30 p.m.

10. As a result of his working from noon to 9:30 p.m. on July 14, 1981, Grievant submitted a request for delayed reporting overtime for the amount of \$14.48. Grievant calculated the amount under Article 8 of the Agreement as follows:

Time for which due (5:30 p.m. - 9:30 p.m.): 4 hours
Rate = 1/2 hourly rate (\$7.24): $\$3.62 \times 4 = \14.48

11. Grievant's request for delayed reporting overtime was denied. Thereafter, Grievant exhausted the Departmental grievance procedure, but without success.

12. On August 4, 1981, the same day he answered Grievant's Step II grievance, Commissioner Philbrook issued a memorandum to all supervisors, wherein he supplemented his June 18, 1981, memorandum. The memorandum provided in pertinent part as follows:

1. Question - Delayed Reporting Time

A Trooper is posted on a monthly schedule to work the day shift during a particular week, except for one day on which he is scheduled to work from 1200 to 2130 in order to participate in an evening training session scheduled in advance for that date. Is he eligible for delayed reporting time compensation?

Answer - No, he is not if the schedule posted for this officer included this assignment. If, however, the schedule had been posted showing this officer scheduled to work the day shift throughout that week and then later his schedule was altered, he would be eligible for "delayed reporting time" compensation for that day.

(Grievant's Exhibit #7)

OPINION

The issue here is whether Grievant is entitled to Delayed Reporting Time premium pay for July 14, 1981, when he was ordered to work a shift which started and ended four hours later than other shifts he worked that week. On July 14, 1981, Grievant worked noon to 9:30 p.m.; on other days that week he worked 8:00 a.m. to 5:30 p.m.

The relevant contractual language provides:

ARTICLE 8

Section 1

The regular work shifts are:

- a. A day shift commencing between 5:00 a.m. and 8:00 a.m....
- b. An evening shift commencing between 4:00 p.m. and 7:00 p.m.... Nothing hereunder shall prevent the Department from establishing additional or overlapping work shifts...

Section 4

(f) Delayed Reporting Time: An employee who is ordered to report for a full tour of duty later than his regular shift starting time and who works a full tour of duty (9.5 hours) or part thereof which terminates later than his normal shift quitting time shall be paid an extra half-time premium for such time worked outside his regularly scheduled workday...

The State's position here is: The "additional or overlapping work shifts" referred to in Article 8, Section 1 constitute: "regular work shifts". The Department established such a shift for Grievant on July 14, and therefore Grievant is not entitled to the Delayed Reporting Time premium for July 14 since he was working a "regular shift" that day. The State argues the intention of the Delayed Reporting Time premium is to provide extra compensation for employees who experience an unexpected change in their previously posted work schedule, and here Grievant knew at least two weeks in advance he was to work noon to 9:30 p.m. on July 14.

Grievant argues it does not matter he knew in advance his shift on July 14 would begin at noon; under the contractual language, the only "regular work shifts" are the day and evening shifts, both of which have a set range of starting times and the noon starting time fits neither.

The task before us is to interpret contract language. The outcome of this case depends on whether the noon to 9:30 p.m. shift worked by Grievant on July 14 is considered a "regular shift". If it is, Grievant is not entitled to Delayed Reporting Time premium pay for that date. If it is not, he is so entitled.

In contract interpretation, we are guided by our Supreme Court. In In re Adele Stacy, 138 Vt. 68 (1980), the Court held:

A contract will be interpreted by the common meaning of its words where the language is clear... Moreover, the Court will not read terms into a contract, unless they arise by necessary implication.

In a further case, In re Grievance of the Vermont State Employees Association, Inc., on behalf of certain 'Phase Down' Employees, 139 Vt. 63, (1980), the Court stated: "It is the duty of this Court to interpret the provisions of a disputed contract, not remake it, or ignore it."

The Agreement before us, in Article 8, Section 1, provides "regular work shifts" are a day shift commencing between 5:00 a.m. and 8:00 a.m. and an evening shift commencing between 4:00 p.m. and 7:00 p.m. This section further provides nothing shall prevent the Department from establishing additional or overlapping work shifts, but it does not provide such shifts shall be considered regular work shifts. For us to so consider them would be to "read terms into a contract" which do not "arise by necessary implication", and to "remake" the contract.

In our view, the evident purpose of the contract language on regular shifts taken together with the Delayed Reporting Time premium provision is to stabilize the working conditions of Troopers by making their daily work schedules uniform for a weekly period. If that uniformity is disturbed, the Trooper is entitled to receive extra compensation. To accept the State's position that additional shifts established by the Department be considered regular shifts would be to promote the disruption of orderly private pursuits the language appears designed to prevent. Thus, Grievant's noon to 9:30 p.m. shift on July 14 was an "additional" shift pursuant to Article 8, but was not a "regular shift". His "regular shift" at the time was the shift he worked every other workday that week - the day shift from 8:00 a.m. to 5:30 p.m.

Since Grievant was ordered to work July 14 on a shift which started later than his regular shift, he is entitled to be paid an extra half-time premium for the hours worked after the normal termination of his regular shift, pursuant to Article 8, Section 4(f) of the Agreement.

ORDER

Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ORDERED: (1) the grievance of John Schilling is allowed; and (2) Grievant shall be paid \$14.48, such amount representing the Delayed Reporting Time premium due him pursuant to Article 8, Section 4(f) of the Agreement for the four hours he worked July 14, 1981, after the quitting time of his regular shift.

Dated this 18th day of February, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kinsley, Sr.

James S. Gilson